

# BRIEFING: US SECURITIES AND EXCHANGE COMMISSION

## NEW RULES AND INTERPRETATIONS FOR THE CONDUCT OF INVESTMENT PROFESSIONALS

On [June 5](#), the US Securities and Exchange Commission finalized [two new interpretive releases](#) and [two new rules](#) for investment professionals in relation to their clients.<sup>1</sup>

### NEW SEC INTERPRETATIONS AND RULES

- The [Interpretation of Standard of Conduct for Investment Advisers](#) was the most controversial component of the SEC's new policy pronouncements. The final interpretive release reaffirms that investment advisers owe a fiduciary duty to their clients but reinterprets the nature of that duty. The new interpretation:
  - States that an investment adviser is not permitted to “subordinate its clients’ interests to its own.” This is different from the prior interpretation, which held that investment advisers must put clients’ interests ahead of their own. The change means that ties will be decided in the adviser’s favor. Since advisory relationships are complex, there are likely to be many cases that fall into a grey area that will be interpreted as a tie – in these cases the advisers will not be penalized.
  - Focuses on disclosure of conflicts of interest, instead of mitigation and elimination of conflicts, which were prioritized in previous interpretations.
  - Narrows the advisers’ duty to provide ongoing account monitoring.
- The [Solely Incidental Interpretation](#) defines when a broker may escape regulation as an investment adviser despite providing advice that is more consistent with an advisory than a brokerage relationship because the advice is “solely incidental” to a brokerage relationship.
- ‘[Regulation Best Interest](#)’ codifies rules defining appropriate broker conduct. It requires brokers to provide basic disclosures to clients about fees, conflicts and other matters; exercise reasonable care; and implement policies and procedures designed to disclose or eliminate conflicts of interest. It does not define what it means for broker to act in the clients best interest, so whether it will result in changes in broker conduct is an open question.
- ‘[Form CRS Relationship Summary](#)’ requires both brokers and investment advisers to provide retail investors with a summary of the terms of their relationship at the commencement of the relationship.

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<sup>1</sup> Information contained in this document is based on explanations by SEC Commissioners and staff in connection with the June 5 open meeting. They are subject to update after a full reading of the pronouncements is complete.

## BACKGROUND

- Securities law recognizes two main categories of individuals who provide investment advice – brokers and investment advisers. Each type of investment professional had different legal obligations with regard to interactions with clients.
- Traditionally, brokers were responsible for executing trades requested by their clients. As such, they had a duty to recommend ‘suitable’ investment products. Provided that the product met the basic needs of the investor, brokers were free to recommend the product that was most profitable for the broker, even if it was not the best option for the client.
- Investment advisers, historically, were individuals who provide comprehensive investment advice and owe their clients a fiduciary duty.
- Over the last two decades, the business models have converged but the legal and regulatory expectations had not been updated to reflect the evolving nature of brokers’ and investment advisers’ relationships with their clients.
- In 2016, the Department of Labor finalized a rule that required all individuals who provide investment advice to retirement savers to act as fiduciaries. This rule was overturned by a court and is no longer being enforced.
- The SEC’s new pronouncements are seen as the Trump Administration’s attempt to address the policy concerns about the conduct of investment professionals.

**These policies do not impact the ongoing obligation of investment fiduciaries to integrate all material factors into investment decisions, including materials environmental, social and governance (ESG) factors.**